

2003 ENVIRONMENTAL NEGOTIATIONS COMPETITION
CALIFORNIA STATE BAR
ENVIRONMENTAL LAW SECTION

RULES OF THE NEGOTIATION COMPETITION

1. ELIGIBILITY

All law schools in California are eligible to enter a maximum of one team each, composed of two law students. Additional teams may be entered pursuant to Rule 12. To enter the competition, the approval of the law school's dean must be obtained. It is recommended, but not required, that a faculty member agree to serve as an adviser. Entry forms must be postmarked no later than January 31, 2003, and sent to the State Bar of California Environmental Law Section, Attention Carol Banks. Acceptance of entry forms postmarked later than January 31, 2003, is at the discretion of the Negotiation Competition Subcommittee of the Environmental Law Section of the State Bar of California ("the Subcommittee"). Each school may select its entrants in any way it chooses.

2. NEGOTIATION FORMAT

Prior to the competition, each participating school will receive one negotiation fact pattern. This fact pattern will consist of:

- a. A common set of facts known by all participants; and
- b. Confidential information known only to the participants representing a particular side.

Legal background material or citations may be provided to participants. While teams do not need a thorough understanding of the underlying area of substantive law, it is important that they have a have a good understanding of how the law applies to the particular

facts of this situation. In preparing for the competition, participants should do whatever legal research they believe is necessary or appropriate. Judges will have access to all fact pattern materials provided to participants.

The competition will consist of two preliminary rounds and one final round.

Each team will represent the same (or a similarly aligned) party in the preliminary rounds. Each preliminary round will be 90-minutes, with the time divided as follows: a 60-minute negotiation session (which may include one 5-minute break per team); a 10-minute period for teams to analyze their performance in private; and a 20-minute period of self-analysis and feedback from the judges (10 minutes per team). During the negotiation session, the teams will negotiate directly with each other (i.e., without the assistance of any third-party neutral.) The two preliminary rounds will take place in the morning of the competition.

Following the preliminary rounds, four teams will be selected to participate in the final round, pursuant to Rule 14. The final round will be two hours, with the time divided as follows: a 90-minute negotiation session (which may include one 5-minute break per team); a 10-minute period for teams to analyze their performance in private; and a 20-minute period of self-analysis and feedback from the judges (10 minutes per team).

As noted above, each team may take one break of no more than 5 minutes during each round. The 60-minute period will continue during any such break. If the team calling the break specifically requests, both teams must leave the room during the break.

Because of the potential for disruption of the competition, faculty advisers and others electing to observe the negotiations are prohibited from leaving the room from the beginning

of each negotiation session through the end of the self-analysis period.

Responsibility rests with the student participants for keeping time and for adherence to allotted time periods for negotiating sessions and breaks. However, if resources and volunteers are available, timekeepers or timekeeping devices may be provided, but no individual identified with a participant may act as timekeeper in a negotiation involving such participant. Decisions by the judges as to elapsed time are final and non-reviewable. The judges will attempt to provide participants with a “ten-minute” warning prior to the expiration of the negotiation period; however, the warning may not be provided in all instances and thus participants should keep a careful watch on the time.

Responsibility for timekeeping during the self-analysis periods rests jointly with the participants and the judges, each having the responsibility to terminate the period at the end of 10 minutes. The team with the letter designation closest to the beginning of the alphabet will go first in the self-analysis.

3. **SELF-ANALYSIS & FEEDBACK**

Following the 10-minute preparation for self-analysis, each team will have 10 minutes in which to analyze its performance in the negotiation for the judges. This will take place outside the presence of the opposing team. Students will begin this 10-minute period by answering, in the presence of the judges, the followings questions: (1) “In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?” (2) “How well did your strategy work in relation to the outcome?”

The team should also be prepared to respond to questions from the judges concerning the team's performance. In addition, the team might use this as an opportunity to explain why it chose a particular approach or even a specific tactic. The judges will provide students with feedback on their performance during the negotiations. The judges may take into consideration for scoring purposes anything said during this session.

4. **COMPETITION SCHEDULE**

The competition consists of three rounds: two preliminary rounds in which all teams participate, and a final round in which four teams participate.

Morning Schedule

8:30 - 9:00	Hospitality suite
9:00 - 9:15	Opening remarks, welcome, and team orientation
9:15 - 9:30	Judges' briefing
	Team orientation
9:30 - 10:30	Round 1 Negotiation. [Each side may request a 5-minute break during this 60-minute period, and any such break will not extend the time.]
10:30 - 10:40	Preparation for self-analysis. (Judges begin filing out score sheets and comment sheets)
10:40 - 11:00	20-minute self-analysis.
11:00 - 11:10	Judges complete score sheets and comment sheets.
11:00 - 11:20	Break
11:20 - 12:20	Round 2 Negotiation. See above regarding breaks.
12:20 - 12:30	Preparation for self-analysis. (Judges begin filing out score sheets

and comments sheets.)

12:30 - 12:50 20-minute self-analysis.

12:50 - 1:00 Judges complete scores sheets and comment sheets and decide on final ranking of teams

Break for lunch, scoring, afternoon assignments [Lunch will be provided]

Afternoon Schedule

1:30 Announcement of finalists.

2:30 - 4:00 Final Negotiation Round . Each side may ask for one 5-minute break during this 90-minute period, and any such break will not extend the time.

4:00 - 4:10 Preparation for self-analysis. (Judges begin filing out score sheets and comment sheets).

4:10 - 4:30 20-minute self-analysis.

4:30 - 4:45 Judges complete score sheets and comment sheets.

4:45 Winners announced.

Closing Reception

5. TEAM ORIENTATION

Every effort will be made to ensure that the fact pattern and rules are clear. The competition administrator shall organize concurrent orientation sessions prior to each round.

All student participants representing a particular side will meet together and be afforded the opportunity to ask questions. This session will be held while the judges are being briefed.

No one other than the student participants, their coaches and person(s) conducting the orientation will be permitted to attend.

The competition administrator will have complete discretion in answering questions related to the fact pattern and rules. However, no new facts may be added to the fact pattern.

Because teams representing each side will meet separately, if one group raises a question regarding the general background information (i.e., the information known by both sides), any clarification will be communicated to the other group and to the judges. As in any negotiation session, the facts are subject to reasonable interpretation by the parties. Whether a team's interpretation is reasonable is not a matter that should be resolved by the person conducting the orientation session. Questions of reasonableness of an interpretation are entirely within the discretion of the judges and are not reviewable.

Submission of inquiries relating to the simulated fact patterns in advance of the orientation session must be in writing. Under no circumstance will additional facts be provided, and inquiries will be accepted only if absolutely necessary—as determined by the Subcommittee — to clarify a bona fide and fundamental question. In no event, however, will a request for clarification be entertained by the Subcommittee unless received in writing by the Competition Administrator at the San Francisco office of the State Bar of California Environmental Law Section by 3 p.m. on March 28, 2003. Fax submissions will be accepted at (415) 538-2368, attention Carol Banks, or email at carol.banks@calbar.ca.gov. The response to inquiries (as well as the actual inquiry) will be provided to all participants; however, the identity of the party seeking clarification will remain confidential.

6. **JUDGES AND JUDGING CRITERIA**

Each round will be observed and evaluated by a panel of two judges. The number of judges may be reduced at the sole discretion of the competition administrator.

Teams will be judged on eight categories: (1) preparation - law, facts, and options available (10 possible points); (2) preparation - negotiation strategy and tactics (10 points); (3) execution of strategy; adaptability, flexibility, and creativity (10 points); (4) outcome of the negotiation (10 points); (5) oral presentation (6 points); (6) teamwork (6 points); and (7) ethics (6 points). The maximum possible score in a round is 58 points. In each of the categories, there is a “neutral” score (“5” in category with a 0 to 10 scale and “3” in a category with a 0 to 6 scale), awarded if nothing strikes the judges positively or negatively about a team’s performance in the category, or if the positive and negative are equally balanced.

In the “preparation – law, facts, and options available” category (10 points), judges will assess whether the team understood the law and the facts; whether it was able to apply the law to the facts and frame appropriate legal arguments; whether it realistically assessed the implications of the options available to resolve the matter; and whether the team thought of creative solutions for the problems it faced. A well-prepared team will be well versed in the facts and the law, understand the reasonable range of settlement options, have anticipated its opponents’ arguments, and have realistically assessed the strengths and weaknesses of its own position and its opponents’ position.

In the “preparation – negotiation strategy and tactics” category (10 points), the judges will assess things such as how well the team had prepared for the negotiation by selecting a strategy for the negotiation (or for individual issues, if different strategies were used for different issues); whether the strategy fit the facts, the law, the client’s objectives, and the

team members' negotiating style or styles; whether the team anticipated the strategy and tactics of the opposing team; and whether the team thought of creative approaches to the negotiation.

In the "execution of strategy" category (10 points), the judges will assess how well the team: executed its selected strategy; employed effective tactics, detected the other side's strategies and tactics; found creative solutions to problems; and was able to adapt and react to new information, unexpected moves by the other side, and other developments during the course of the unfolding negotiation.

In the "outcome of the negotiation" category (10 points), the judges will assess how well the final outcome of the negotiation advances the interests of the team's client. It is understood, however, that one team cannot control whether an agreement is reached; if the other side is simply intransigent, no amount of negotiating skill can bring about an agreement. The judges will be instructed not to penalize a team for rejecting a proposed settlement that is worse, from the team's client's point of view, than no agreement at all.

The "oral presentation" category (6 points) will assess the articulateness, clarity, persuasiveness, and effectiveness of the team's oral presentation.

In real negotiations, one member of a team of two lawyers might do most or all or most of the talking, either by plan or as a result of the flow of the negotiation. However, to make this competition educationally valuable, and because real negotiations often involve a division of labor, the student teams are asked to divide the speaking responsibilities relatively evenly between the two team members. The "teamwork" category (6 points) assesses how

effective the team members were in sharing responsibility, backing each other up, not undercutting each other, and generally working together as a team.

Ethics (6 points). In most sessions, the Subcommittee expects the score for both teams in the “ethics” category to be “3,” the neutral score. Nonetheless, ethical issues may arise. If a team is scored very low (1 or less) for an ethical lapse, the judges will alert the Subcommittee, which, pursuant to Rule 10, may decide to disqualify the contestants.

7. **BRIEFING OF JUDGES**

Judges will be briefed before the first morning round and before the afternoon round in conformity with the Negotiation Competition Instructions for Briefing Judges.

8. **PERMISSIBLE ASSISTANCE**

The team coach or faculty adviser may advise the team in its planning and preparation for the competitions, including the final round. No one, including team coaches and faculty advisers, however, may give advice or instructions to, or attempt to communicate in any way with, any of the participants during the period from commencement of the participants’ negotiation session through completion of the self-analysis and final scoring period for that negotiation session. No participants or other person identified with a participant may attend a negotiation session of any other team (apart from the session that the team itself is participating in). Nor may the participants, their coaches, faculty advisors, or any other person connected with a team communicate with another of its school’s team if a school has more than one team entered in the competition until all of the school’s teams have completed the round.

The mere act of communication, receipt of information, or attendance proscribed by this rule will constitute a violation, regardless of the substance thereof and regardless of whether initiated by a participant or by any other person. Violation of this rule will result in disqualification. See Rule 10 for procedures. Harmless error will not be a defense to a complaint based on violation of this rule, because of the appearance of impropriety occasioned even by casual exchanges unrelated to the substance of the negotiation.

9. **TEAM IDENTIFICATION AND PAIRING ROUNDS**

Each team will be assigned a random letter by the competition administrator. The names of team members' schools are not to be divulged to the judges until the second round score sheets have been collected. If a judge asks a team member which school the team member represents, the member should respond that the rules do not permit the divulging of that information until the competition is completed.

The competition administrator will randomly match opposing sides for the first and second rounds. No team will negotiate against the same team in both the first and second rounds of the competition. Furthermore, the competition administrator shall vary the random selection in order to avoid placing teams from the same school in the same bracket in a round.

10. **VIOLATIONS**

Any serious ethical lapses and/or any violations of these rules that may affect the results of the competition will be resolved on the day of the competition by a majority vote of

the members of the Subcommittee present at the competition. The decision of the Subcommittee shall be final and non-reviewable.

11. **PARTICIPANT EXPENSES**

No costs incurred by participants in the competition, including travel, lodging and incidental costs, will be reimbursed by the State Bar of California Environmental Law Section. This Section 11 shall not apply to judges.

12. **ADDITIONAL TEAM: UNEVEN NUMBER OF REGISTERED TEAMS**

The competition administrator may permit one or more additional eligible teams to participate in the competition if the number of teams registered does not equal a multiple of two. At the option of the competition administrator, such additional teams may represent any school participating in the competition. Any additional team must otherwise qualify for participation in every respect; however, only one side of the simulated controversy should be represented by students competing for the same school.

13. **FAILURE OF REGISTERED TEAM TO APPEAR ON THE DAY OF THE COMPETITION**

There is always the possibility that because of illness or other emergency a team will not appear on the day of the competition. In this unlikely event, the competition administrator may request that another registered team volunteer to split apart to compete as single-person teams during the preliminary rounds of the competition. Only those teams representing the side of the team that failed to appear will be eligible for participation as individuals. If more than one team volunteers, the team will be chosen by lot. If no team volunteers, the team will be chosen by lot from among all teams representing the side of the team that failed to appear. If one of the single-person teams qualifies for the final round of the regional competition, both team members will proceed to the finals. In the event a single-person team under this rule begins competing, the absent team forfeits.

14. **SCORING**

The competition will be judged and scored in accordance with the Criteria for Judges. At the end of the two preliminary rounds, the teams will be ranked according to each team's

cumulative score from the preliminary rounds. [A single score shall be assigned for each round, based on the average of the individual scores assigned by the judges of that round.] The four teams with the highest scores will proceed to the final round. The final round will involve new confidential instructions.

The first-place team and the runner-up will be determined based on the best cumulative score from the preliminary and final rounds, and announced immediately following tabulation of results. The first-place team will receive a cash prize of \$1,000 and recognition in the State Bar Environmental Law Section Newsletter. The runner-up team will receive a cash prize of \$500 and recognition in the State Bar Environmental Law Section Newsletter.

15. **TIE BREAKING PROCEDURE**

If it is necessary to break a tie to determine the four teams advancing to the final round or to determine the first and second place rankings in the final round, the tie will be broken by choosing the team achieving the best (highest) score in the Outcome of the Session category. If a tie still remains, the tie shall be broken by a coin toss.

16. **CONTROLLING LAW**

For purposes of the competition, assume that federal and California law apply, as appropriate under the circumstances.

17. **INTERPRETATION OF THESE RULES**

The competition administrator will resolve any disputes concerning the interpretation of these rules, or of the judging rules. The competition administrator's interpretation shall be

final.